

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

STEVEN KNOX,

Petitioner,

v.

GARRETT LANEY,

Respondent.

Case No. 6:18-cv-00453-JR

OPINION AND ORDER

IMMERGUT, District Judge.

On August 21, 2019, Magistrate Judge Jolie A. Russo issued her Findings and Recommendation (F&R) (Dkt. 65), recommending that Respondent’s Motion to Dismiss (Dkt. 64) be granted and Petitioner’s Amended Petition for Writ of Habeas Corpus (Dkt. 23) be denied. Judge Russo further recommended that the Court enter a judgment of dismissal and decline to issue a Certificate of Appealability. No party filed objections.

DISCUSSION

Under the Federal Magistrates Act (“Act”), as amended, the court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.”

[28 U.S.C. § 636\(b\)\(1\)](#). If a party files objections to a magistrate judge’s F&R, “the court shall make a de novo determination of those portions of the report or specified proposed findings or

recommendations to which objection is made.” *Id.* But the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the F&R to which no objections are addressed. See *Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Nevertheless, the Act “does not preclude further review by the district judge, sua sponte,” whether de novo or under another standard. *Thomas*, 474 U.S. at 154.

No party having filed objections, the Court has reviewed the F&R (Dkt. 65) and accepts Judge Russo’s conclusion that Petitioner’s habeas corpus petition is now moot. While the F&R does not address whether to dismiss the case with or without prejudice, the Ninth Circuit has held that “a dismissal for mootness is a dismissal for lack of jurisdiction.” *Tur v. YouTube, Inc.*, 562 F.3d 1212, 1214 (9th Cir. 2009); see also *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 78–79 (2013). Dismissals for lack of jurisdiction “must be without prejudice.” *Hampton v. Pac. Inv. Mgmt. Co. LLC*, 869 F.3d 844, 846 (9th Cir. 2017).

Accordingly, the Court adopts Judge Russo’s F&R (Dkt. 65), as supplemented in this opinion. Respondent’s Motion to Dismiss (Dkt. 64) is GRANTED, and Petitioner’s Amended Petition for Writ of Habeas Corpus (Dkt. 23) is DENIED as moot. This case is DISMISSED without prejudice. The Court DECLINES to issue a Certificate of Appealability because Petitioner has not made a substantial showing of the denial of a constitutional right, as required under 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 10th day of September, 2019.

/s/ Karin J. Immergut
Karin J. Immergut
United States District Judge